

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 325 of 2006with
CIVIL APPLICATION NO 1710 OF 2006 FOR STAY.**

For Approval and Signature:

**HONOURABLE MR.JUSTICE H.K.RATHOD
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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NEW INDIA ASSURANCE CO. LTD - Appellant(s)

Versus

BABUBHAI DIPUBHAI CHAUHAN & 4 - Defendant(s)

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Appearance :

MR SHALIN N MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

**THE HON'BLE SMT. JUSTICE ABHILASHA
KUMARI**

Date : 28/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Shalin N.Mehta for appellant -New India Assurance Co. Ltd. Through this appeal, appellant has challenged award made by Motor Accident Claims Tribunal (Aux.), Ahmedabad City in MACP No. 1297 of 2003 dated 25th April, 2005 wherein the Claims Tribunal has, while partly allowing the claim petition, directed opponents to pay Rs.5,62,000.00 jointly and severally to the claimants with interest at the rate of 6 per cent p.a. From the date of claim petition till realization with proportionate costs.

2. Brief facts of this appeal are as under:

It is the case of claimants that on 30th October, 2003 at about 4.00 p.m., deceased Ranjanben and her husband, petitioner no. 1 were

coming on their Motor Bike bearing Registration No. GJ-1-CL-4563 from Matar to Ahmedabad via Kheda, Mahemdavad and Khatraj. Said motor bike was being driven by petitioner no.1 while deceased Ranjanben was sitting as a pillion rider. When they were passing from Kheda Mahemdavad to Khatraj Cross Roads, at that time, at about 4.30 p.m., opponent No.1 came from the back side driving Eicher Motor Truck Bearing Registration No. GJ-4-U-8736 with full speed, rashly and negligently and dashed with the motor bike and, thereby, deceased Ranjanben succumbed to injuries. It is also case of claimants that the deceased Ranjanben was used to earn Rs.4000.00 to Rs.5000.00 p.m. By running Gruh Udyog. She was hale and hearty and if unfortunate accident would not have occurred, she would have survived long. Claimants are middle class family and due to death of deceased, they are put in financial crisis. Deceased Ranjanben had undergone plenty of pain, shock and suffering after accident and before her death. In view of

the above facts, petitioners claimed Rs.6,00,000.00 by way of compensation loss of income, pain, shock, suffering, funeral expenses, transportation etc. from the opponents.

3. Though notice of claim petition was served on opponents, opponent no. 1 and 2 have not appeared before Claims Tribunal and have not filed any reply to contest the claim petition, therefore, claim petition proceeded against opponents no.1 and 2 in their absence.

4. Opponent No. 3 New India Assurance CO. Ltd. Appeared before Claims Tribunal and filed its reply at Exh. 26, contending inter alia, that the petitioners should be put to strict proof of the factors like particulars of accident, injuries causing death of deceased Ranjanben, her age, income and other factors. Opponent No. 3 has denied that the accident has taken place due to rash and negligent act on the part of opponent No. 1. It is alleged by Insurance Co. that the petitioner was negligent to a major extent namely 75% for the occurrence of accident. Therefore,

according to the Insurance CO., petition was barred by non-joinder of necessary parties as the driver, owner and insurance CO. of the Motor Bike were not joined as party opponents. Insurance Co. further contended before the Claims Tribunal that the petitioners must prove all the averments that are made in the memo of claim petition by leading cogent, reliable and trustworthy evidence. However, without prejudice to its right, it is contended that the claim of the claimants is excessive and exorbitant.

5. After filing of pleadings by respective parties, claims tribunal framed issues at Exh.19 which are as under:

- (1) Whether the applicant proves that the deceased died due to rash and negligent driving by the driver of the vehicle involved?
- (2) Whether the applicant is entitled to get compensation ? If yes, what amount and from whom?
- (3) What order and award?

6. By answering issue No.1 in affirmative, tribunal held that the accident in question has taken place solely due to rash and negligence on the part of opponent No.1. Claims Tribunal examined merits in issues no.2 and 3. Claims Tribunal fixed age of deceased Ranjanben as 40 years at the time of accident for the purpose of calculation of compensation on the basis of petition, photo copy of PM Note and other documentary evidence on record. Thereafter, factor of income and occupation was examined by claims tribunal. Considering deposition of petitioner at Exh.28, claims tribunal fixed monthly income of deceased Ranjanben at Rs.3,000.00 for the purpose of computation of compensation. Tribunal relied upon apex court decision in case of Smt. Sarla Dixit and another versus Balwant Yadav and others, AIR 1996 SC 1274. After adopting Gujarat Formula, tribunal has come to the conclusion that considering income of Rs.3000.00 p.m., tribunal worked datum figure of Rs.4500.00 p.m. Following the formula

mentioned in case of Sarla Dixit (supra) by apex court. Tribunal deducted 1/3rd as personal expenditure of deceased and ultimately fixed average amount available to family of deceased i.e. Dependency benefit. Thereafter, Tribunal fixed age of deceased 40 years and applied multiplier of 15 and ultimately worked out amount of Rs.5,40,000.00 and added Rs.15000.00 as conventional figure for loss of estate and consortium. Claimants claimed Rs.10,000.00 towards funeral charges. However, considering that there is no iota of evidence produced by claimants in support of such claim, tribunal awarded Rs.5000.00 by way of transportation charges and Rs.2000.00 by way of funeral expenses. Thus, under the impugned award, tribunal awarded Rs.5,62,000.00 to claimants with 6 per cent interest p.a. From the date of application till the date of realization of amount.

7. Learned advocate Mr. Shalin Mehta

appearing for appellant Insurance Co. raised contention that the claims tribunal has committed gross error in assessing income of Rs.3000.00 of the deceased, since there was no iota of evidence produced by claimants before claims tribunal. According to his submission, in absence of any documentary evidence or cogent evidence, assessment of income by claims tribunal is erroneous or on higher side. Therefore, he submitted that the assessment of income made by the claims tribunal is not correct and is contrary to law. Except this contention, no other contention was raised by Mr. Mehta. No decision was cited by Mr. Mehta in support of his contention.

8. We have perused impugned award made by Claims Tribunal. We have thoroughly gone through the contention raised by learned Advocate Mr. Mehta before us. Claims Tribunal has considered factor of income and occupation of deceased in paragraph 12 and 13 of impugned award. Claims

Tribunal has relied upon the evidence of husband of deceased i.e. Petitioner no.1 in respect of income of deceased though in cross examination, petitioner no.1 has admitted that he has no documentary evidence to support his version in respect of income of the deceased. However, Tribunal considered circumstances and nature of business being run by the deceased and on that basis, tribunal has fixed income of deceased at Rs.3000.00 for the purpose of computation of compensation. Thereafter, tribunal calculated compensation by relying upon the decision of apex court in case of Sarla Dixit (supra). Relevant discussion made by claims tribunal in para 12 and 13 of impugned award is reproduced as under:

"12. So far as the factor of income and occupation is concerned, petitioner No.1 has stated in his deposition Exh.28 that deceased Ranjanben used to earn Rs.150.00 per day by running Gruh Udyog. But, at the same time, in the cross examination, he admitted that he has no documents to support his version.

In these circumstances and considering the nature of business being run by the deceased, I fix monthly income of deceased Ranjanben as Rs.3000.00 for the purpose of compensation.

13. In view of the observation made by His Lordship in a reported case, Smt. Sarla Dixit and another V/s. Balwant Yadav and others, AIR 1996 SC 1274, so far as the adoption of the proper multiplier is concerned, it was observed that future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors namely the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. Applying these principles

to the facts of the case before this Court in the aforesaid case, it was observed that the deceased in that case was of 39 years of age. His income was Rs.1032.00 p.m. He was more or less on a stable job and considering the prospects of advancement in future career, proper higher estimate of monthly income of Rs.2000.00 as gross income to be taken as average gross future income of the deceased and deducting at least $1/3^{\text{rd}}$ therefrom by way of personal living expenses, had he survived the loss of dependency, could be capitalized by adopting the multiplicand of Rs.1400.00 per month or Rs.17000.00 per year and that figure could be capitalized by adopting multiplier". Considering the above ratio, in the present case, monthly income of deceased Ranjanben is Rs.3000.00 had she survived in life and had successfully completed her future career till the time of her life, the average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely Rs.3000.00 per

month to the maximum which she would have otherwise got had she not died a premature death i.e. Rs.3000.00 per month $\times 3 =$ Rs.9000.00 divided that figure by two, thus, the average gross monthly income spread over her entire future career had it been available to work out to Rs.4500.00 per month would have been the gross monthly average income available to the family of the deceased had she survived as a bread winner. From the gross monthly income, at least $1/3$ will have to be deducted by way of her personal expenses and other liabilities that would roughly work out to Rs.3000.00 per month and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.4500.00 per month, balance of Rs.3000.00 would have been average amount available to the family of the deceased i.e. Her dependents. As the age of deceased Ranjanben was 40 years at the time of her death, the proper multiplier would be 15. Rs.36,000=00 multiplied by 15 will work out to Rs.5,40,000.00. To this

figure will have to be added the conventional figure of Rs.15000.00 by way of loss of estate and consortium."

Deceased Ranjanben was working, having business of Gruh Udyog. Deceased was earning member in the family. That fact was proved by her husband before the Claims Tribunal. According to his evidence, deceased was earning Rs.150.00 per day from Gruh Udyog. On that basis, Tribunal calculated and fixed amount of Rs.3000.00 being income of deceased. Apex Court in Lata Wadhwa and others v. State of Bihar and others, reported in AIR 2001 SC 3218, decided question of fixing or assessing income of housewife in absence of data in para 10 of said decision. Para 10 of said decision is reproduced as under:

"10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been

made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, approximate multiplier has been applied but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000.00 per annum in cases of some and Rs.10,000.00 for others, appears to us to be grossly low. It is true that the claimants who ought to have given datas for determination of compensation, did not assist any manner by providing the datas for estimating the value of services rendered by such housewives. But even in absence of such datas and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000.00 per month and Rs.36000.00 per annum. This would apply

to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be re-calculated. Taking the value of services rendered per annum to be Rs.36,000.00 and thereafter applying the multiplier, as has been applied already and so far as the conventional amount is concerned, the same should be Rs.50000.00 instead of Rs.25000.00 given under the report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000.00 per annum and multiplier applied is eight. Though the multiplier applied is correct, but the value of services rendered at Rs.10000.00 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of

compensation should be re-determined, taking the value of services rendered at Rs.20,000 per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000.00 towards the conventional figure."

Thus, in *Lata Wadhwa and others (supra)*, apex court fixed income of housewives between the age group of 34 to 59 at Rs.3000.00 who were active in life. In this case, age of deceased was fixed at 40 years, covered by said decision of apex court. Apart from the earning by the deceased, roll of the housewife in running a house is not that of rendering services as a slave. Her contribution to keep family together, providing household services besides matrimonial duties cannot be treated lightly. It has got nothing to do with the earning capacity of the husband which is an addition to what is taken care by the housewife. No matter what the status of the family may be, contribution of the housewife

towards household may be treated to be at minimum Rs.3000.00 p.m. In the facts of this case, deceased was not merely a housewife but she was earning member of family. These two factors were taken into account by the claims tribunal while fixing Rs.3000.00 as income of the deceased which, according to our opinion, cannot be considered as excessive or exorbitant and evidence of husband in absence of documentary evidence must have to be believed by the claims tribunal. In private Gruh Udyog carried out by the deceased, husband may not be having any documentary proof to prove income of the deceased. So, merely because there is no documentary evidence to prove income of deceased, it cannot be considered to be a ground for disbelieving or discarding oral evidence of husband - petitioner no.1, therefore, according to our opinion, claims tribunal was right in assessing the income of deceased and was also right in calculating amount of compensation based upon such assessment and in doing so, according

to our opinion, tribunal has not committed any error while awarding compensation in favour of claimants. [See : The Municipal Corporation of Greater Bombay v. Shri Laxman Iyer and Anr., III (2003) ACC 551 (SC) = VI (2003) SLT 706=JT 2003 (8) 108; judgment of the High Court of Jammu and Kashmir in Oriental Insurance Co. Ltd. v. Shamsher Singh and Ors., I (200) ACC 209=396 (SC) = 1996 ACJ 581; Amarsinh Thakur and others v. Sandeep Chatwal & Anr. Dated 5th July, 2004 of Delhi High Court in FAO 8 of 1989; Mathura Dutt v. DTC reported in I 2005 ACC 33].

Therefore, in view of the above discussion, contention raised by Mr. Mehta cannot be accepted. Same is, therefore, rejected. Except that contention, no other contention was raised by Mr.Mehta before us. Therefore, compensation awarded by Claims Tribunal cannot be considered to be excessive or exorbitant. Findings given by the claims tribunal are legal and valid based on cogent evidence. There is no perversity in the

finding given by the tribunal. There is no contradictory finding given by the claims tribunal.

Consequently, this appeal is dismissed. Civil Application No. 1710 of 2006 for Stay is also dismissed. Registry is directed to transmit the amount of Rs.25,000.00 (Rupees twenty five thousand only) deposited by the appellant insurance company as required under section 173 of the MV Act to the claims tribunal for payment to claimants.

(H.K. Rathod, J.)

(Abhilasha Kumari, J.)

Vyas